

**PRECEDENTIAL**

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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NO. 04-3904  
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UNITED STATES OF AMERICA

v.

JAHEED HILL

Appellant

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On Appeal from the United States District Court  
for the District of New Jersey  
(D.C. No. 03-cr-00543)  
District Judge: Honorable Mary Little Cooper  
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Submitted Pursuant to Third Circuit L.A.R. 34.1(a)  
and Third Circuit I.O.P. 10.6  
April 7, 2005

BEFORE: RENDELL, FISHER and VAN ANTWERPEN,  
Circuit Judges

(Filed: June 14, 2005)

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OPINION OF THE COURT

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VAN ANTWERPEN, Circuit Judge

Jaheed Hill (“Appellant”) was sentenced to a term of imprisonment of 90 months and three years supervised release by the United States District Court for the District of New Jersey after pleading guilty to one count of unlawful

possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1) & (2). He appealed this sentence, arguing that in light of Blakely v. Washington, 542 U.S. \_\_\_\_, 124 S.Ct. 2531 (2004), his sentence must be vacated and the matter remanded for re-sentencing. Following the release of the Supreme Court's decision in United States v. Booker, 543 U.S. \_\_\_\_, 125 S.Ct. 738 (2005), Appellant also filed a Motion for Summary Action pursuant to Third Circuit Internal Operating Procedure 10.6, requesting summary remand. We now affirm the sentence of the District Court and deny Appellant's summary remand motion.

At his sentencing hearing, Appellant urged the District Court to hold the Sentencing Guidelines unconstitutional pursuant to the Supreme Court's holding in Blakely. The District Court stated it would await further developments before holding that the Guidelines unconstitutional, choosing instead to apply the Guidelines to Appellant's sentence.<sup>1</sup> However, the District Court also issued an alternative

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<sup>1</sup> Appellant's sentence was based solely on his criminal history and the factual stipulations contained in his plea agreement. His enhanced sentence therefore implicates no Sixth Amendment violation. See United States v. Ordaz, 398 F.3d 236, 240 (3d Cir. 2005) (rejecting the argument that the facts of prior convictions should have been submitted to a jury); see also Booker 125 S.Ct. at 756 ("Any fact . . . necessary to support a sentence exceeding the maximum authorized by the facts . . . must be admitted by the defendant or proved to a jury beyond a reasonable doubt").

sentence per our instructions in United States v. Dickerson, 381 F.3d 251, 260 n.9 (3d Cir. 2004). Specifically, the District Court stated:

In rendering this sentence I will, of course, follow the suggestion of various cases since Blakely, and I will base my sentence, whatever it turns out to be, I'll base it, alternatively, on an indeterminate sentencing scheme.

It is clear that the District Court believed Appellant's sentence was justified both, and alternatively, by the Sentencing Guidelines and under an indeterminate sentencing scheme. Although in United States v. Davis we expressed no view on the impact of alternative sentences, 407 F.3d 162, 166 (3d Cir. 2005), we now join several of our sister circuits and conclude that where, as here, a District Court clearly indicates that an alternative sentence would be identical to the sentence imposed under the Guidelines, any error that may attach to a defendant's sentence under Booker is harmless. See United States v. Antonakopoulos, 399 F.3d 68, 81 (1st Cir. 2005); see also United States v. Thompson, 403 F.3d 533, 535 (6th Cir. 2005); United States v. Palladino, 401 F.3d 471, 482 (7th Cir. 2005); United State v. Marcussen, 403 F.3d 982, 985 (8th Cir. 2005).<sup>2</sup> We therefore deny Appellant's motion,

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<sup>2</sup> We also note that our position is in accord with the view of the Fourth Circuit, which has been expressed in a series of unpublished opinions. See United States v. Shabazz, 127 Fed.Appx. 662 (4th Cir. 2005); see also United States v.

and since Appellant has not raised any issues on appeal other than those we have discussed, we will affirm the sentence of the District Court.

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TO THE CLERK:

Please file the foregoing opinion.

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Martinez, 127 Fed.Appx. 107 (4th Cir. 2005); United States v. Washington, 124 Fed.Appx. 809 (4th Cir. 2005); United States v. Anderson, 124 Fed.Appx. 211 (4th Cir. 2005).